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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

ALFRED LARRAGA,

Case No. 09-CV-2791-MMA-RBB

Plaintiff,

v.

**ZWICKER & ASSOCIATES, P.C.'S
ANSWER TO THE COMPLAINT OF
ALFRED LARRAGA**

ZWICKER & ASSOCIATES, P.C.

Defendant.

Defendant, Zwicker & Associates, P.C. ("Zwicker") responds as follows to the individually-numbered paragraphs of the Complaint filed by Plaintiff Alfred Larraga ("Larraga"):

1. No response required.
2. No response required
3. Zwicker admits that this Court has jurisdiction over this matter.
4. Zwicker admits that this Court has personal jurisdiction over Zwicker.
5. Zwicker admits that venue is proper.
6. No response required.
7. Zwicker admits the allegations contained in this paragraph.
8. Zwicker admits the allegations contained in this paragraph.

1 9. Zwicker admits the allegations contained in this paragraph.

2 10. Zwicker denies that it is a national company. Further answering, Zwicker states that it is
3 a law firm and professional corporation organized under the laws of the Commonwealth
4 of Massachusetts with a principal place of business at 80 Minuteman Road, Andover,
5 MA 01810.

6 11. To the extent that Zwicker is required to admit or deny the allegations contained in this
7 paragraph, Zwicker denies the allegations.

8 12. Zwicker denies the allegations contained in this paragraph.

9 13. Zwicker denies the allegations contained in this paragraph.

10 14. Zwicker denies the allegations contained in this paragraph.

11 15. Zwicker denies the allegations contained in this paragraph.

12 16. Zwicker admits that Larraga sent Zwicker a cease communication request via fascimilie
13 on December 8, 2009, but denies that Zwicker contacted Larraga after its receipt of
14 Larraga's cease communication request. Further answering, Zwicker's records show that
15 no calls were made to Larraga after Zwicker's receipt of Larraga's cease communication
16 request.

17 17. Zwicker denies the allegations contained in this paragraph and in each of its sub-
18 paragraphs.

19 Responding to Larraga's prayer for relief, Zwicker denies that it is liable to Larraga,
20 denies that Larraga has incurred any damages and denies that he is entitled to any recovery.

21
22 **AFFIRMATIVE DEFENSES**

23 **FIRST AFFIRMATIVE DEFENSE**

24 The Complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6)
25 for failure to state a claim upon which relief may be granted.

26 **SECOND AFFIRMATIVE DEFENSE**

27 Larraga's claims are or may be barred by applicable statutes of limitation.
28

1 THIRD AFFIRMATIVE DEFENSE

2 If any violation of any applicable law occurred, which Zwicker denies, such violation
3 was the result of a bona fide error, notwithstanding the maintenance of procedures reasonably
4 adopted to avoid such error.

5 FOURTH AFFIRMATIVE DEFENSE

6 If Larraga has incurred any harm or damages, which Zwicker denies, such harm or
7 damages were caused by Larraga himself or by other persons for whose conduct Zwicker is not
8 responsible.

9 FIFTH AFFIRMATIVE DEFENSE

10 If Larraga has incurred any harm or damages, which Zwicker denies, he failed to take
11 reasonable action to mitigate his alleged damages.

12 SIXTH AFFIRMATIVE DEFENSE

13 Larraga has waived his claims.

14 SEVENTH AFFIRMATIVE DEFENSE

15 Larraga is estopped from asserting his claims.

16 EIGHTH AFFIRMATIVE DEFENSE

17 As of this time, Zwicker has not yet had the opportunity to discover facts relevant to
18 Larraga's claims or as to other potential defenses to those claims. On that basis, Zwicker
19 reserves its right to seek to amend to assert additional defenses.

20 WHEREFORE, ZWICKER respectfully requests that this Court,

- 21 1. Enter judgment in Zwicker's favor as to all of Larraga's claims;
22 2. Award Zwicker its attorneys fees and costs incurred in defending this action;
23 and
24

1 3. Award Zwicker such other and further relief as this Court may deem just and
2 proper.
3
4

5 Dated: March 12, 2010

ZWICKER & ASSOCIATES, P.C.

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7 by: /s/ Raymond Lee, Esq.
8 Raymond J. Lee, Esq.
9 Email: rlee@zwickerpc.com
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CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that a true and correct copy of the foregoing
ZWICKER & ASSOCIATES, P.C.'S ANSWER TO THE COMPLAINT OF ALFRED LARRAGA
has been served on Plaintiffs' attorney below through the Court's ECF system, on this 12th day of
March, 2010:

/s/ Raymond Lee, Esq.
Raymond Lee, Esq.
Email: rlee@zwickerpc.com

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